

Doc. # 5629
ADOPTED 3/24/94

AGREEMENT

WHEREAS, the Commonwealth of Massachusetts has established a Deferred Compensation Plan for its employees pursuant to the provisions of Mass. Gen. Laws chapter 29 section 64;

WHEREAS, the **Boston Redevelopment Authority** (hereafter "the Entity") has established a Deferred Compensation Plan pursuant to the provisions of Mass. Gen. Laws chapter 29 section 64B, chapter 44 section 67, and/or chapter 35 section 57;

WHEREAS, the Commonwealth desires that political subdivisions and public instrumentalities be able to utilize the services of the Commonwealth's Plan for purposes of uniformity and economies of scale;

WHEREAS, the Entity desires to utilize the services of the Commonwealth's Plan to enjoy the benefits of uniformity and economies of scale;

NOW, THEREFORE, the Commonwealth and the Entity agree to the following:

1. The Entity shall utilize for its Plan all of those investment products solicited through bids by the Commonwealth Plan;
2. The Entity shall utilize the Plan Coordinator and all administrative services of the Commonwealth Plan;
3. The Commonwealth shall select investment products for its Plan in accordance with the competitive bidding process detailed in Mass. Gen. Laws chapter 29 section 64;
4. The Entity authorizes the Commonwealth to negotiate and sign contract(s) with a Plan Coordinator and/or investment providers on behalf of the Entity;
5. The Commonwealth agrees that contracts negotiated by the Commonwealth with investment providers and/or a Plan Coordinator shall provide similar (identical, if possible) terms and provisions for the Entity's Plan as are provided for the Commonwealth's Plan.
6. The Entity agrees that its funds in the Commonwealth Plan's fixed investment option (currently entitled "the Income Fund") cannot be transferred to any other fixed investment option in the Entity's Section 457 Plan(s).
7. The Commonwealth's Oversight Committee shall seek to protect the integrity of the Entity's Plan in the same manner that it seeks to protect the integrity of the Commonwealth's Plan.

The Commonwealth of Massachusetts
Department of the State Treasurer

8. All amounts of compensation deferred under the Entity's Plan, all property and rights purchased under the Entity's Plan, and all income attributable to such amounts, property or rights, placed in investment products selected by the Commonwealth's Plan in accordance with the provisions of Mass. Gen. Laws chapter 29 section 64, although invested in accounts in the name of the Commonwealth, shall remain (until made available to the participant or other beneficiary) solely the property and right of the Entity, subject only to the claims of the Entity's general creditors.

Entered into this _____ day of _____, 19_____.

Commonwealth of Massachusetts

By: _____

Joseph Craven
Deputy Treasurer on behalf
of Joseph D. Malone,
Treasurer and Receiver
General

By: _____

Treasurer or Chief Financial Officer

Date: _____

Date: _____

Approved as to form:

By: _____

Assistant Attorney General
Commonwealth of Massachusetts



The Commonwealth of Massachusetts
Department of the State Treasurer

One Ashburton Place

Boston, Mass. 02108-1608

Joseph D. Malone
Treasurer and Receiver General

February 7, 1994

BOSTON REDEVELOPMENT
AUTHORITY
FEB 10 9 13 AM '94

Bernice McLennon
Boston Redevelopment Authority
City Hall Plaza
Boston, MA 02201

Re: Agreement to Utilize the Services of the Commonwealth's
Deferred Compensation Plan

Dear Ms. McLennon:

We recently informed you that the Commonwealth's Deferred Compensation Plan ("the Plan") has selected The Copeland Companies as the Plan Coordinator for the next four years. As PEBSCO was a signatory to the current Agreement between the Plan and the **Boston Redevelopment Authority**, the replacement of PEBSCO requires that the Plan execute a new Agreement with the **Boston Redevelopment Authority**. I have enclosed two copies of a new Agreement for your signature.

Let me emphasize that there shall be no disruption in services or any administrative changes resulting from your signing of this new Agreement.

The new Agreement differs from the old Agreement in several respects. First, while the current Agreement is a four way Agreement among the Commonwealth, the the **Boston Redevelopment Authority**, PEBSCO and PEBSCO of Massachusetts, the new Agreement is a two party Agreement between the **Boston Redevelopment Authority** and the Commonwealth. Since Treasurer Malone has taken office, all of the Plan's contracts with investment providers have required that services be made available to any political subdivision wishing to utilize the services of the Plan without the necessity of each political subdivision signing separate Agreements with the providers. Similarly, the Plan's new contract with Copeland shall require that all services rendered to the Commonwealth be provided to any political subdivision wishing to utilize the services of the Plan. The

above contractual arrangements render it unnecessary to enter into three party Agreements and shall prevent a recurrence of the need for each political subdivision to recontract with the Commonwealth any time that a new coordinator or investment provider is selected.

Second, the new Agreement calls for the **Boston Redevelopment Authority** to "utilize the services" of the Plan rather than to "join" the Plan, as provided for in the current Agreement. This change in contract language shall cause no change in the services provided the **Boston Redevelopment Authority**. Rather, this change is made to alleviate concerns that have been raised that the current Agreement arguably might be considered invalid or fail to provide political subdivisions with eligible deferred compensation plans under the provisions of 457 of the Internal Revenue Code. Specifically, M.G.L. c. 29 & 64B provided that political subdivision establishing deferred compensation programs are not required to solicit bids to invest the program's funds if the funds are invested in the same investment product provided in the Commonwealth's plan; the statute does not explicitly authorize political subdivisions to "join" the Commonwealth's plan.

Moreover, Section 457(b) (1) of the Internal Revenue Code defines an "eligible deferred compensation plan" as "a plan" established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants." Arguably, employees of political subdivisions do not perform services for the Commonwealth and by "joining", rather than "utilizing services" of the Commonwealth's plan, political subdivisions may not have created an "eligible deferred compensation plan."

Third, a paragraph has been added to the Agreement to provide that all amounts invested by your employees shall be deemed solely the property of the **Boston Redevelopment Authority** regardless of whether the money is invested in accounts in the name of the Commonwealth of Massachusetts. This language is included because of the provisions of 457 (b) (6) of the Internal Revenue Code, which require that all amounts deferred and all income attributable to such amounts shall remain solely to property of the employer.

Fourth, restrictions on the **Boston Redevelopment Authority** against investing employee funds with investment providers not in the Commonwealth's plan have been removed. The current four way Agreement incorporated by reference the "PEBSCO/Commonwealth Agreement". In the "PEBSCO/Commonwealth Agreement", PEBSCO was appointed the "exclusive" coordinator of the Plan. PEBSCO has argued that political subdivisions, by agreeing to be bound by the terms of the "PEBSCO/Commonwealth Agreement", had agreed not to offer any alternative plans to their employees with a different coordinator. Treasurer Malone has never approved of the restriction on the flexibility of any town or public instrumentality from establishing whatever tax deferral program it believes to be in the best interest of its employees. In particular, he has not approved of the fact that such restriction was placed on political subdivisions without explicitly calling to the political subdivision's attention that this

restriction was one of the Plan. The signing of a new Agreement provides the opportunity for elimination of this restriction.

Under the new provisions of the attached Agreement you are welcome to continue to exclusively utilize the services of the Commonwealth's plan as your deferred compensation program. Upon execution of this Agreement nothing will prevent you from joining other plans or utilizing their services in addition to utilizing the services of the Commonwealth's plan.

However, you should be aware of potential legal issues and restrictions which might need to overcome if you were to leave the Commonwealth's Plan for another Plan, seek to join another Plan in addition to the Commonwealth's Plan, or allow investments in other products in addition to the products offered in the Commonwealth Plan:

(1) While it is clear that your employees may place new deferrals with another Plan, it is not as clear that deferrals currently in the Commonwealth Plan could be transferred to another Plan. Internal Revenue Code regulations only permit transfers to a new Plan by "former participants". A participant cannot withdraw funds from a Plan unless they have reached age 70 1/2, have left public service or if they undertake an emergency withdrawal. To the extent that your employees actually "joined" the Commonwealth's Plan in the past, it is not clear that as current participants that they could transfer their funds to the **Boston Redevelopment Authority's** plan, they could transfer their funds between investments in your Plan.

(2) The Commonwealth has contractually agreed with the relevant investment providers that investments in the "Income Fund" (the Plan's fixed investment option) cannot be transferred to any other fixed investment option. Thus, the new Agreement provides that employees cannot switch funds from the "Income Fund" to any fixed investment option that you might add to your program through an arrangement with another Plan.

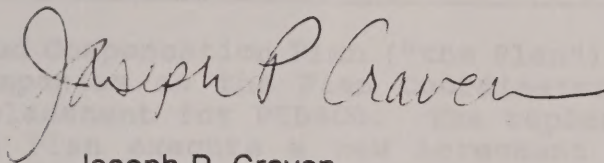
(3) To the extent that you seek to utilize services from more than one Plan or allow investment with providers not in the Commonwealth's Plan, it is probable that you will need to create your own Plan Document.

I would suggest that if in addition to signing the enclosed Agreement you desire to utilize any services other than those offered in the Commonwealth's Plan that you consult with your legal counsel regarding how you may proceed.

Please sign both copies of the enclosed Agreement and return to me in the enclosed envelope as soon as possible. Upon receipt, I will sign and forward a copy to you for your files.

If you have any questions, please feel free to contact Laureen Casper, Manager of the Commonwealth's Deferred Compensation Plan at 617-367-3900 or the Plan's outside legal counsel Stephen Schultz at 617-951-9980.

Sincerely,



Joseph P. Craven
Deputy Treasurer

MEMORANDUM

Doc #5629
ADOPTED
MARCH 24, 1994

TO: BOSTON REDEVELOPMENT AUTHORITY and
MARISA LAGO, DIRECTOR

FROM: JOSEPH J. NOONAN, ASSISTANT DIRECTOR FOR
ADMINISTRATION & FINANCE and
BERNICE MCLENNAN, DIRECTOR OF HUMAN RESOURCES

SUBJECT: AGREEMENT TO UTILIZE THE SERVICES OF THE COMMONWEALTH'S
DEFERRED COMPENSATION PLAN - THE COPELAND COMPANIES

The Commonwealth's Deferred Compensation Plan ("the Plan") recently selected The Copeland Companies as the Plan Coordinator for the next four years, as a replacement for PEBSCO. The replacement of PEBSCO requires that the Plan execute a new Agreement with the Authority. It is expected that there will be no disruption in services nor any administrative changes resulting from the signing of the new Agreement.

The new Agreement differs from the old Agreement in several respects.

First, while the old Agreement is a four way Agreement among the Commonwealth, the Authority, PEBSCO, and PEBSCO of Massachusetts, the new Agreement is a two party Agreement between the Authority and the Commonwealth. This renders it unnecessary for the Authority to recontract with the Commonwealth any time a new coordinator or investment provider is selected.

Second, the new Agreement calls for the Authority to "utilize the services" of the Plan rather than to "join" the Plan. This change in contract language will cause no change in the services provided the Authority, rather it is meant to alleviate concerns that the old Agreement might be considered invalid or fail to provide political subdivisions with eligible deferred compensation plans under the provisions of 457 of the Internal Revenue Code.

Third, a paragraph has been added to the Agreement to provide that all amounts invested by Authority employees shall be deemed solely the property of the Authority regardless of whether the money is invested in accounts in the name of the Commonwealth. This language is included because of the provisions of 457 (b) (6) of the Internal Revenue Code, which require that all amounts deferred and all income attributable to such amounts shall remain solely the property of the employer.

DEFERRED COMPENSATION AGREEMENT

MARCH 24, 1994

Fourth, restrictions on the Authority against investing employee funds with investment providers not in the Commonwealth's plan have been removed.

Under the new provisions of the Agreement, the Authority may continue to exclusively utilize the services of the Commonwealth's plan as our deferred compensation program. Upon execution of this Agreement nothing will prevent the Authority from joining other plans or utilizing their services in addition to utilizing the services of the Commonwealth's plan.

However there are potential legal issues and restrictions which might need to be overcome if the Authority were to leave the Commonwealth's Plan for another Plan, seek to join another Plan in addition to the Commonwealth Plan, or allow investments in other products in addition to the products offered in the Commonwealth Plan.

(1) While it is clear that Authority employees may place new deferrals with another Plan, it is not as clear that deferrals currently in the Commonwealth Plan could be transferred to another Plan.

(2) The Commonwealth has contractually agreed with the relevant investment providers that investments in the "Income Fund" (the Plan's fixed investment option) cannot be transferred to any fixed investment option. Thus, the new Agreement provides that employees cannot switch funds from the "Income Fund" to any fixed investment option that might be added to the program through an arrangement with another Plan.

(3) To the extent that the Authority seeks to utilize services from more than one Plan or allows investment with providers not in the Commonwealth's Plan, it is probable that the Authority will need to create its own Plan Document.

If, in addition to signing the enclosed Agreement, the Authority desires to utilize any services other than those offered in the Commonwealth's Plan, it will be necessary to consult with legal counsel regarding how to proceed.

It is recommended that the Authority authorize the Agreement to utilize the services of the Commonwealth's Deferred Compensation Plan as per the following proposed vote.

VOTED: That the Director be, and hereby is, approved and authorized to sign the Agreement to utilize the services of the Commonwealth of Massachusetts' Deferred Compensation Plan, substantially in the form attached.